



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

FITZGERALD LUMBER & LOG CO., INC.
VAR051500

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and Fitzgerald Lumber & Log Co., Inc., to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the DEQ.
5. "VRO" means the Valley Regional Office of the DEQ.
6. "Fitzgerald" means Fitzgerald Lumber & Log Co., Inc.
7. "Order" means this document, also known as a Consent Special Order.

8. "NOV" means Notice of Violation.
9. "VPDES" means Virginia Pollutant Discharge Elimination System.
10. "VPDES Permit Regulation " means 9 VAC 25-31-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Fitzgerald is a saw mill and log yard located at 403 East 29th Street, Buena Vista, Virginia. The Fitzgerald site is configured to discharge stormwater into Chalk Mine Run, Maury River Subbasin, Upper James River Basin.
2. On March 26, 2004, DEQ staff inspected Chalk Mine Run in response to a pollution complaint. During the inspection, staff observed a discharge from Fitzgerald to Chalk Mine Run. Staff observed a deposit of a fine grained dark sediment in the streambed below the discharge point but observed no such deposit in the streambed upstream of the point of discharge. Staff observed that a stormwater collection ditch located on the western boundary of the Fitzgerald site had failed, allowing site runoff from the wood storage, bark grinding and sawmill area to enter Chalk Mine Run before it could reach the stormwater retention pond. No impacts to the Chalk Mine Run benthic community were observed.
3. During the March 26, 2004 inspection, DEQ staff asked representatives of Fitzgerald if Fitzgerald's stormwater discharge was covered by a VPDES Permit. The Fitzgerald representatives indicated, and DEQ staff subsequently confirmed, that Fitzgerald did not have a VPDES Permit.
4. On April 1, 2004, DEQ issued NOV No. W2004-03-V-9001 to Fitzgerald citing the following violations of the VPDES Permit Regulation and State Water Quality Standards:
 - (a) Unauthorized Discharge - 9 VAC 25-31-50 (A)

Except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to:

- (1) Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
- (2) Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

(b) **Violation of State Water Quality Standards - 9 VAC 25-260-20 (A)**

Failure to maintain state waters, including wetlands, free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.

5. Following the March 26, 2004 inspection, Fitzgerald repaired the breach in its stormwater collection ditch and removed trees from the berm of its stormwater retention pond.
6. On April 12, 2004, DEQ received Fitzgerald's registration for a VPDES General Permit for coverage of stormwater discharges associated with industrial activity. On April 19, 2004, DEQ assigned coverage to Fitzgerald under VPDES General Permit Registration No. VAR051500.
7. The Order requires Fitzgerald to perform certain corrective actions and to assess the adequacy of its stormwater retention pond. The Order also assesses a civil charge in settlement of the violations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Fitzgerald, and Fitzgerald agrees:

1. To perform the actions described in Appendix A of this Order; and,
2. To pay a civil charge of **\$1,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Fitzgerald shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

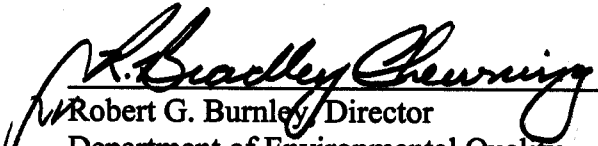
1. The Board may modify, rewrite, or amend the Order with the consent of Fitzgerald, for good cause shown by Fitzgerald, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Fitzgerald admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Fitzgerald declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Fitzgerald to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Fitzgerald shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Fitzgerald shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fitzgerald shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Fitzgerald intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Fitzgerald. Notwithstanding the foregoing, Fitzgerald agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Fitzgerald. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fitzgerald from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Fitzgerald voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of September, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

Fitzgerald voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: June 3, 2004

Commonwealth of Virginia

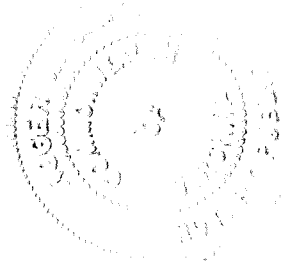
City/County of Buena Vista

The foregoing document was signed and acknowledged before me this 3rd day of June, 2004, by Calvert S. Fitzgerald II, who is
(name)

Operations Mgr. of Fitzgerald Lumber & Log Co., Inc., on behalf of the Corporation.
(title)

[Signature: Roger W. Smith]
Notary Public

My commission expires: June 30, 2006.



APPENDIX A
SCHEDULE OF COMPLIANCE
FITZGERALD LUMBER & LOG CO., INC.

1. **By June 15, 2004**, Fitzgerald shall submit to DEQ's Valley Regional Office for its review and approval, a plan for maintaining stored bark and wood debris on site in a manner which will prevent the debris, or leachate from the debris, from entering Chalk Mine Run. Fitzgerald shall respond in writing to any comments provided by DEQ on any the plan **not later than 30 days** after receipt of the comments. The plan shall be incorporated by reference into the Order upon DEQ's approval.
2. **By June 30, 2004**, Fitzgerald shall submit to DEQ's Valley Regional Office for its review and approval, engineering calculations assessing whether Fitzgerald's stormwater retention pond and its discharge pipe are properly sized to manage the facility's stormwater flows. Should DEQ determine that the calculations indicate that the stormwater retention pond or discharge pipe are not adequately sized or constructed, **within 60 days** of DEQ's determination, Fitzgerald shall submit to DEQ for its review and approval, a plan and schedule for properly retrofitting the pond and discharge pipe. Fitzgerald shall respond in writing to any comments provided by DEQ on any such plan and schedule **not later than 30 days** after receipt of the comments. Such plan and schedule, if required, shall be incorporated by reference into the Order upon DEQ's approval.